

### **REMARKS**

The Applicant acknowledges, with thanks, receipt of the Official Communication mailed April 2, 2004. Applicants have corrected the listing of claims, reflecting that claims 47-53 and 56-60 have been canceled, claims 30-31, 54-55 and 61-72 have been withdrawn in accordance with the Examiner's Action of October 30, 2003 and the Official Communication of April 2, 2004. Furthermore, accompanying this response is a terminal disclaimer reflecting the Official Communication directions regarding the removal of the disclaimer from the remarks section of Applicants' response.

In addition responding to the Official Communication of April 2, 2004, Applicants respectfully request consideration of following remarks responsive to the Office Action of October 30, 2003.

### **Non-Art Matters**

#### **I. Election/Restriction**

The Examiner has asserted that claims 54-55 and 61-72 are directed to an invention that is independent or distinct from the invention originally claimed. According to the Examiner, because Applicant has already received an action on the merits for the originally presented invention, the invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, the Examiner has withdrawn claims 54-55 and 61-72 from consideration as being directed to a non-elected invention. To conform to the Examiner's actions, Applicant has withdrawn claims 54-55 and 61-72, as denoted in the Listing of Claims.

#### **II. Priority**

The Examiner has denied Applicant's claim of priority to U.S. Patent Application Serial No. 08/537,765, now US Patent No. 6,160,169, relative to claims 47-53 and 56-60. Accordingly, Applicant has canceled without prejudice claims 47-53 and 56-60, as denoted in the Listing of Claims.

Applicant thanks the Examiner for granting the claim of priority with respect to claims

22-24, 26-29, 32-34 and 41-42.

### **Art Matters**

#### **I. Claim Rejections - 35 U.S.C. § 112 1st Paragraph**

The Examiner has rejected claims 47-53 and 56-60 under 35 USC 112(1) as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The Examiner has also rejected claims 47-53 and 56-60 under 35 U.S.C. § 112(1) as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Accordingly, Applicant has canceled without prejudice claims 47-53 and 56-60, as denoted by the Listing of Claims.

Applicant acknowledges with gratitude the Examiner's withdrawal of the new matter and enablement rejections of claims 22-24, 26-29, 32-34 and 41-41.

#### **II. Claim Rejections - 35 U.S.C. § 102**

The Examiner has rejected claims 47-50, 52-53 and 56-57 under 35 U.S.C. § 102(e) as being anticipated by Tessier-Lavigne et al. (U.S. Patent No. 6,248,934). Accordingly, Applicant has canceled without prejudice claims 47-50, 52-53 and 56-57.

### **Miscellaneous**

Applicant has amended claims 22 and 32 to better define Applicant's invention. No new matter has been entered by these amendments. Support for these amendments may be found in specification at page 7, paragraph 3, sentence 2 (which reads as "In an embodiment of the invention linker region A includes or consists of a splice acceptor") and at pages 9-10, paragraph 4 beginning on page 9, sentence 4 (which reads in part as "...in a further aspect of the invention, incorporate a splice acceptor sequence 5' to the IRES element to enable functional integration into an intron.").

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It is submitted that the pending claims are in a condition for allowance. Early notice to that effect is respectfully requested.

**CONCLUSION**


In view of the foregoing, it is respectfully submitted that all present claims are patentably distinct over the art of record and in condition for allowance thereof. If the Examiner believes there are any further matters, which need to be discussed in order to expedite the prosecution of the present application, the Examiner is invited to contact the undersigned.

If there are any fees necessitated by the foregoing communication, please charge such fees to our Deposit Account No. 50-0902, referencing our Docket No. 78870-32932.

Respectfully submitted,

TUCKER ELLIS & WEST LLP

Date: 4/29/04

  
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Susan L. Mizer  
Registration No. 38,245  
Customer No. 23380  
1150 Huntington Building  
925 Euclid Avenue  
Cleveland, Ohio 44115-1475  
(216) 696-3466 (phone)  
(216) 592-5009 (fax)

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Claim Listing

**CERTIFICATE OF MAILING UNDER 37 C.F.R. §1.8**

I hereby certify that this correspondence (along with any paper referenced as being attached or enclosed) is being deposited on the below date with the United States Postal Service with sufficient postage as first class mail in an envelope addressed Mail Stop Amendment, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.

Date: April 29, 2004

Valerie A. Salvino  
Name: Valerie A. Salvino